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USDOC FOR 4420/ITA/MAC/MCQUEEN, DAS KASOFF, HIJIKATA, GENERAL
COUNSEL'S OFFICE JOEL BLANK, AND GENERAL COUNSEL SULLIVAN
STATE FOR EB/TPP MASSINGA, FELSING
STATE PASS COPYRIGHT FOR POOR
STATE PASS USPTO FOR BOLAND
STATE PASS USTR FOR MARUYAMA, WINTER MCCOY, ESPINEL, CELICO
USDOJ FOR NEWBY
DHS/CPP FOR MACRAY
USPACOM FOR FPA

E.O. 12958: N/A

TAGS: [KIPR](#) [ECON](#) [ETRD](#) [CH](#)

SUBJECT: Embassy IPR Attache Cohen Visits Shenzhen, Guangzhou to
Discuss Local Legislation and Patent Developments

¶1. (SBU) SUMMARY: The Shenzhen People's Congress is revising its technical secrets rule and drafting a new IPR code, and the Shenzhen and Guangdong Intellectual Property Offices (IPOs) will seek meetings with USPTO in the United States this summer, officials told Embassy Senior IPR Attache Mark Cohen on June 14-15. U.S. companies told Cohen that they continue to be frustrated with the lack of deterrent penalties for IPR infringers, and one company said local authorities have been less cooperative since the U.S. brought IPR-related WTO consultation requests in April. Shenzhen and Guangdong authorities are willing to assist with a planned U.S. staffed in August, but said national-level authorities need to make initial approvals. END SUMMARY

Shenzhen Congress: Drafting Local IPR Regulations

¶2. (U) Liu Shuguang, Vice Chair of the Legislative Affairs Committee of the Shenzhen People's Congress, said Shenzhen has used its special legislative authority to enact nine local IPR-related statutes since 1992, including those covering high-tech zones, digital content for library management, and personnel recruitment. He said Shenzhen also plans to formulate a comprehensive IPR code of its own, notwithstanding its limited legislative competence and difficulties adopting a national IPR code, estimating that it will require up to five years to complete. Liu also said that the Shenzhen Congress is making significant revisions to a local technical secrets regulation including clarifying its relationship with employee non-compete agreements (the ambiguities in that rule were previously the subject of a U.S. question to China at the WTO's TRIPS Council).

¶3. (SBU) When asked about the relationship between local Peoples Congress statutes and national laws, regulations adopted by the State Council (fagui), and ministerial rules (guizhang) in the Chinese system, Liu unambiguously came out on the side of local legislatures in the event of a conflict with national regulations and rules. He said that "in theory" local regulations override not only ministerial rules, but also national regulations and judicial interpretations, because they are statutory in nature. Judicial interpretations only govern the courts or Procuratorate; ministerial regulations are adopted by a lower legislative body than a People's Congress. Of course, Liu mentioned, local laws seek to harmonize with current or proposed national laws and regulations as well as

judicial interpretations to minimize such conflicts. (Comment: This of course contradicts the interpretation of many central officials and illustrates the continuing ambiguities of China's legal system.)

14. (U) Liu expressed an interest in learning more about U.S. negotiated rulemaking, which he studied in graduate school in China (focusing on the U.S. Administrative Procedures Act). Regarding the planned August staffdel to Shenzhen, Liu said he would be happy to assist but noted that the National People's Congress would need to weigh in and would likely defer to the Ministry of Foreign Affairs on the initial approval.

Shenzhen IPO: Keen on Foreign Exchanges

15. (U) Wang Youming, Deputy Director General of the Shenzhen Intellectual Property Office (IPO), said his office maintains close cooperation with a number of foreign experts and governments, particularly those in the United States, Europe, and Japan. Several U.S. law firms and judges trained local officials this and last year on trial procedures, application filing, and patent infringement, including Section 337 actions. Wang said the Shenzhen IPO helps companies such as Huawei and ZTE file their intellectual property overseas. Wang participated previously in a joint USPTO/SAC program on standards and IPR last year in Shenzhen. In addition, the IPO offers subsidies of several hundreds of thousands of RMB to firms that are interested in participated in international standards-setting bodies. Wang said a delegation from the Shenzhen government hopes to meet with USPTO this summer. He said his office would also assist with the planned August staffdel, but noted the necessity of approval from the State Intellectual Property Office.

Guangdong IPO: New Patent Protection Rule

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16. (SBU) Huang Wenxia, Deputy Director of the Legal Affairs Division, said Guangdong's new Patent Protection Rule gives the IPO more authority to collect evidence and seize violators' properties. It also introduces harsher penalties for repeat infringers. Xie Hong, Director of the Guangdong IPO's Coordination and Administration Division, said Guangdong will soon issue its IPR Strategic Guideline covering the creation, administration, and application of IPR in all fields. Huang said the Zhuhai IPO has begun providing expert opinions regarding infringement to help companies respond to patent infringement notices delivered by lawyers (Comment: This seems an unrealistic solution considering the difficulties in reviewing patent grants and the limitations on technical expertise in local IP offices.) Xie noted that Guangdong lacks enough trained professionals or a robust enough service industry to support the high level of patent and trademark applications originating from Guangdong. She added that a delegation headed by the Guangdong IPO Director General will travel to the United States in August and hopes to visit USPTO.

AmCham: Difficulties Old and New

17. (SBU) In a discussion with members of AmCham South China, Cohen reiterated that the U.S. WTO consultation request is not an attack on China's IP system but rather a focused action. He said the bilateral customs agreement reached at the May Strategic Economic Dialogue will likely improve cooperation between customs authorities. Cohen encouraged companies to bring civil or criminal cases in the jurisdictions of trade fairs as a way to avoid local protectionism.

18. (SBU) A representative from Proctor & Gamble noted the lack of clear statistics on criminal IPR cases in China, particularly those involving foreign rights-holders. He added that suspended sentences in IPR judgments are becoming more common. A representative from sporting goods firm Acushnet said his company has seen a decline in cooperation from the Chinese government since the U.S. requested WTO consultations in April.

19. (U) This cable has been cleared by IPR Attache Mark Cohen.

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